

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION.

MDL Docket No. 1332

Hon. J. Frederick Motz

This Document relates to:

Burst.com, Inc. v.
Microsoft Corp.,

Civil Action No JFM-02-cv-2952

**MOTION FOR RELIEF FROM LOCAL RULE 104.8(c) AND MOTION FOR ORDER
SHORTENING TIME FOR HEARING OF BURST.COM, INC.'S THIRD MOTION TO
COMPEL MICROSOFT TO PROVIDE BASIC DISCOVERY CONCERNING
ITS E-MAIL DESTRUCTION**

Plaintiff Burst.com hereby moves this Court for (1) an order relieving it of the requirements of Local Rule 104.8(c), regarding service of papers and final meet and confer prior to filing a discovery motion with the Court and (2) an order shortening time in which Burst's Third Motion to Compel Microsoft to Provide Basic Discovery Concerning It's E-Mail Destruction may be heard. In support of this Motion, Burst shows as follows:

1. Burst has previously filed two motions on the same issues, upon which this Court ordered Microsoft to provide the discovery requested. *See* Burst's initial "Motion to Compel Microsoft to Search for and Produce Key-E-mails," which was heard on August 28, 2003, and Burst's second motion, captioned "Renewed Motion to Compel Microsoft to Search for and Produce Key E-Mails and to Compel Microsoft to Testify as to When, How, and Why it Excluded E-mails from Back-Up Tapes," which was heard by the Court on February 6, 2004. The Court granted the relief requested and entered its written Order on March 12, 2004.

2. Notwithstanding the two orders compelling it to make appropriate discovery, Microsoft still refuses to comply. The F.R.C.P. Rule 30(b)(6) witness it produced on April 21, 2004, was not properly prepared, and did not answer the questions Microsoft was ordered to answer in the March 12 Order, all as set forth in the Memorandum filed herewith.

3. Because the parties have already briefed these issues in large part, Microsoft has already been ordered to make this discovery, and time for discovery grows short, Burst respectfully requests that this Court entered its order, exempting this motion from the requirements of local Rule 104.8 (c) and shortening time. Burst served its motion to compel on Microsoft on April 29, 2004.

4. Counsel for Burst has several times requested concurrence of Microsoft's counsel in shortening time and waiving the requirements of Local Rule 104.8(c). Microsoft's counsel has not, as of the time of filing this motion, concurred.

5. Burst requests that the Court order the motion be briefed and heard on the following schedule, or on a schedule of the Court's convenience:

Microsoft file and serve Opposition: May 10, 2004;

Burst file and serve reply brief: May 13; and

Hearing: May 19 or thereafter.

DATED: April 30, 2004

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